

REMARKS

The Office Action, dated September 1, 2004, has been carefully considered. Claims 13-30 are pending in the present application after entry of this amendment. Claims 1-13 have been canceled without prejudice. Applicants reserve the right to prosecute any canceled subject matter in one or more related applications. Claim 14 has been allowed. New claims 15-30 have been added. Support for new claims 15-30 may be found in the originally-filed specification at, for example, page 13, lines 28-32; page 25, lines 10-29; and original claims 1-13. It is believed that no new matter has been introduced.

Reconsideration and allowance of the present application in view of the above amendments and the following remarks are respectfully requested.

I. CLAIM OBJECTIONS

Claims 10 and 13 are objected to because of informalities. Claims 10 and 13 have been canceled without prejudice. Accordingly, it is believed that the claim objections have been obviated.

II. CLAIM REJECTIONS

Claims 1, 2, 4-8, and 12 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,163,952 to Froix (“Froix”). Claims 1, 2, and 4-9 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,136,000 to Luttenberger *et al.* (“Luttenberger”). Claims 1-6 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,288,825 to Toyooka *et al.* (“Toyooka”). Claims 10 and 13 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent 6,631,233 to Yamashita *et al.* (“Yamashita”) or obvious under 35 U.S.C. § 103(a) in view of Yamashita. Claim 11 is rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Froix. Although Applicants disagree with these rejections, claims 1-13 have been canceled to expedite prosecution. It is believed that the cancellation of these claims obviates the claim rejections.

In addition, it is believed that the new claims are patentable over Froix, Luttenberger, Toyooka, and Yamashita for the reasons discussed in the following section.

III. NEW CLAIMS

As discussed above, new claims 15-30 have been added. Claims 15-30 are directed to stents for insertion into a vessel comprising a composition that includes a first monomer and a second monomer. Claims 15, 25, and 28 are independent claims. Independent claim 15 is directed to a stent for insertion into a vessel comprising: a

composition comprising (a) between 10-98% of a first monomer composed of an aliphatic ester Cl-C50 of acrylic acid which when homopolymerized has a glass transition temperature lower than about 25°C, wherein the first monomer is fluorinated; and (b) a second monomer having sites of unsaturation and capable of copolymerization with the first monomer, the second monomer when homopolymerized having a glass transition temperature greater than 25°C, wherein the monomers when polymerized in the presence of a crosslinker forming a polymer have a glass transition temperature of less than about 25°C. Claims 16-24 depend from claim 15 and, thus, also include those limitations.

Independent claim 25 recites a stent for insertion into a vessel comprising a composition comprising: between 10-98% of butyl acrylate; methylmethacrylate; and polyethylene glycol methacrylate, wherein the composition when polymerized in the presence of a crosslinker forms a polymer having a glass transition temperature of less than about 25°C. New claims 26-27 depend from claim 25, and thus include the limitation of that claim.

New independent claim 28 recites a stent for insertion into a vessel comprising: a composition comprising: (a) greater than about 40 weight percent of pentafluoropropyl acrylate monomer; and (b) between 3-30 weight percent of heptadecafluorodecyl methacrylate monomer, said composition when polymerized forming a polymer having a glass transition temperature of less than 25°C. New claims 29-30 depend from claim 28, and thus also include those limitations.

It is believed that the new claims are patentable over the references cited in the Office Action for the following reasons:

A. Froix

Froix does not disclose or suggest using a first monomer of an aliphatic ester of acrylic acid which is fluorinated and when the composition is homopolymerized has a glass transition temperature lower than about 25°C. Thus, Froix does not disclose or suggest a composition comprising (a) between 10-98% of a first monomer composed of an aliphatic ester Cl-C50 of acrylic acid which when homopolymerized has a glass transition temperature lower than about 25°C, wherein the first monomer is fluorinated; and (b) a second monomer having sites of unsaturation and capable of copolymerization with the first monomer, the second monomer when homopolymerized having a glass transition temperature greater than 25°C, wherein the monomers when polymerized in the presence of a crosslinker forming a polymer have a glass transition temperature of less than about 25°C as recited in independent

claim 15. Moreover, one skilled in the art would not find motivation in the disclosure of Froix to obtain the present invention where Froix does not disclose or suggest the use of a first monomer of an aliphatic ester of acrylic acid which is fluorinated and when the composition is homopolymerized has a glass transition temperature lower than about 25°C.

Froix also does not disclose or suggest a composition comprising: between 10-98% of butyl acrylate; methylmethacrylate; and polyethylene glycol methacrylate, wherein the composition when polymerized in the presence of a crosslinker form a polymer having a glass transition temperature of less than about 25°C as recited in independent claim 25. In addition, Froix does not disclose or suggest a composition comprising: (a) greater than about 40 weight percent of pentafluoropropyl acrylate monomer; and (b) between 3-30 weight percent of heptadecafluorodecyl methacrylate monomer, said composition when polymerized forming a polymer having a glass transition temperature of less than 25°C.

Moreover, one of ordinary skill in the art would not find motivation in the teachings of Froix to provide a stent having a composition comprising the specific combination of monomers which when polymerized form a polymer having a glass transition temperature of less than 25°C as recited in new claims 25 and 28.

Applicants submit that the Federal Circuit has stated that one cannot consider a reference in less than the entirety, *i.e.*, disregard disclosures in the reference that diverge from and teach away from the invention. Specifically, the Federal Circuit has stated, “It is impermissible within the framework of a Section 103 rejection to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what the reference fairly suggests to one of ordinary skill in the art”. *In re Wesslau*, 353 F.2d 238, 241 (CPCA 1965). Moreover, the Federal Circuit has made very clear that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” *In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

In the present Office Action, the Examiner combined two components of Example 4, methyl methacrylate and polyethyleneglycerol methacrylate, with a component of Example 2, hexafluorobutyl methacrylate to arrive at the present invention. Applicants submit that Example 4 of Froix does not disclose or suggest combining a fluorinated acrylate that has a glass transition temperature lower than 25°C with methyl methacrylate and polyethyleneglycol methacrylate, absent hindsight analysis. Similarly, Example 2 of Froix does not disclose or suggest combining the fluorinated acrylate, hexafluorobutyl methacrylate, with methyl methacrylate and polyethyleneglycerol methacrylate of Example 4.

Accordingly, Friox does not disclose or suggest the composition as recited in new claims 25 and 28.

Thus, it is believed that the new claims are patentable over Froix.

B. Luttenberger

Luttenberger discloses coating compositions that are “particularly suitable for use in the motor vehicle industry.” (col. 5, lines 63-64). Luttenberger does not disclose or suggest a stent (or any medical device) for insertion into a vessel comprising a composition as recited in the new claims. Accordingly, it is believed that the new claims are patentable over Luttenberger.

C. Toyooka

Toyooka does not disclose or suggest a medical device, much less a stent for insertion into a vessel comprising a composition as recited in the present new claims. Instead, Toyooka discloses a fluoroacrylic polymer composition having a good stain resistance, water repellency, oil repellency and exhibiting a lubricating effect (col1, lines 11-14). As such, it is believed that the new claims are patentable over Toyooka.

D. Yamashita

Yamashita teaches a copolymer composition for forming a graded index type optical fiber. (Abstract). Yamashita does not disclose or suggest a stent for insertion into a vessel comprising a composition as recited in the new claims. Moreover, one skilled in the art would not be motivated in the teachings of Yamashita to obtain the present invention where Yamashita does not disclose or suggest a stent or any medical device. Accordingly, it is believed that the new claims are patentable over Yamashita.

Thus, for the above reasons, it is believed that the new claims are patentable over the cited references and are in condition for allowance.

IV. CONCLUSION

As all objections and rejections are believed to be overcome, all claims are believed to be in condition for allowance. Reconsideration and allowance of the present application are respectfully requested. An early notice to that effect would be appreciated. Should the Examiner not agree with Applicants' position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

Respectfully submitted,

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